

REMARKS / ARGUMENTS

The present application includes pending claims 1-38, all of which have been rejected. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0104099 ("Novak") in view of U.S. Patent № 6,774,926 ("Ellis"). The Applicant respectfully traverses these rejections at least based on the following remarks.

REJECTION UNDER 35 U.S.C. § 103

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 ("MPEP") states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that

“the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art” (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

I. The Proposed Combination of Novak and Ellis Does Not Render Claims 1-38 Unpatentable

The Applicant now turns to the rejection of claims 1-38 under 35 U.S.C. 103(a) as being unpatentable over Novak in view of Ellis.

A. Rejection of Independent Claims 1, 11, 21, and 32 under 35 U.S.C. § 103(a)

With regard to the rejection of independent claim 1 under 103(a), the Applicant submits that the combination of Novak-Ellis does not disclose or suggest at least the limitation of “determining when one or both of personal media and/or broadcast media is scheduled in at least one **constructed display for presentation at a first geographic location, wherein said scheduling is performed at said first geographic location,**”

as recited by the Applicant in independent claim 1 (emphasis added). The Final Office Action states the following:

With respect to Claim 1, the claimed "determining when one or both of personal media and/or broadcast media is scheduled in at least one constructed display for presentation at a first geographic location, wherein said scheduling is performed at said first geographic location" is met in part by Novak that teaches the determination of scheduled broadcast media by using an electronic program guide, EPG 153, which is constructed/produced by a local studio 106 or a cable service provider 108 and where personal media can be scheduled by a individual acting as a program director, upload source 122 (Fig. 1; paragraph [0038]).

See Final Office Action at pages 2-3. The Examiner has equated Applicant's "constructed display" to Novak's electronic program guide 153. Referring to FIG. 1 of Novak, the electronic program guide (EPG) 153 is produced/generated by the local studio 106, the cable service provider 108, or another party. The EPG is then stored at the set-top-box (STB) 152 at the cable subscriber's location. See Novak at ¶ 0037. If we assume that the "first geographic location" is where the EPG is scheduled/generated (i.e., the local studio 106 or the cable service provider 108), the Applicant points out that Novak's EPG is for presentation at the cable subscriber's location and not at the location where the EPG was scheduled/generated, i.e., EPG is not for presentation at the "first geographic location." Furthermore, the "first geographic location" cannot be the cable subscriber's location since, as explained in Novak's ¶ 0037, **the EPG is generated outside of the subscriber's location and then it is provided to the subscriber** and stored at the STB 152 for subsequent display. In other words, **Novak**

does not disclose that the EPG is scheduled at a given location for presentation at the same location. In fact, based on the principle of operation disclosed by Novak (EPG is generated outside of the subscriber's location and then communicated to the subscriber location for display, and the media studio/cable provider is distinct and separate from the cable subscriber), the Applicant submit that it is not possible under Novak for the EPG guide to be generated at a given location for presentation at the same location. Therefore, combining Novak with any other reference (that teaches the EPG is scheduled at a given location for presentation at the same location) would render Novak inoperable and would not overcome the above deficiencies of Novak, and the rejection of claims 1-38 should be withdrawn at least for the above reasons.

The Examiner conceded that Novak does not explicitly teach that the EPG is scheduled at a given location for presentation at the same location, and then relied for support in Ellis by stating the following:

However, in the same field of endeavor, Ellis et al. teach a personal television channel system in which contributors such as individuals in the home may create personal television channel programming and may set up scheduling for the personal television channel programming- whereby the contributor and the viewers may use the same user equipment thus enabling a contributor to receive scheduling information of personal and/or traditional television channels (Abstract; Fig. 1; co/.1, lines 46-51; co/.2, line 65 to co/.3, line 6; co/.3, lines 18-28; co/.4, lines 59-61; co/.5, lines 15-22; co/.11, lines 45-51; co/.14, lines 23-32).

See the Final Office Action at page 3. Initially, as already explained above, the Applicant points out that combining Novak with any other reference, including Ellis, would not overcome the deficiencies of Novak since it is not possible under Novak for the EPG guide to be generated at a given location for presentation at the same location, and any. A combination of Novak and any reference that teaches the EPG is scheduled at a given location for presentation at the same location would render Novak inoperable.

Assuming for the sake of argument that Novak can be properly combined with Ellis, the Examiner's argument is still deficient since Ellis does not even teach or suggest that the EPG is scheduled at a given location for presentation at the same location. In fact, Ellis is very similar to Novak with regard to how the EPG is generated and handled. More specifically, Ellis discloses a system for distributing personal television channel programs and program schedule information (EPG) **from contributors to viewers**. The program schedule information (e.g., the EPG) is first communicated to a data storage facility (52 in FIG. 1) for storage in the program schedule database (54 in FIG. 1). See Ellis at col. 1, lines 25-45. From the program schedule database, the EPG information is communicated to television distribution facilities (32 in FIG. 1). Only then is the EPG distributed to the individual viewers at the user equipment 34. See *id.* at col. 4, lines 42-58. In this regard, Ellis, similarly to Novak, does not disclose that the EPG is scheduled at a given location for presentation at the same location.

Therefore, the Applicant maintains that the combination of Novak-Ellis does not disclose or suggest at least the limitation of “determining when one or both of personal media and/or broadcast media is scheduled in at least one constructed display for presentation at a first geographic location, wherein said scheduling is performed at said first geographic location,” as recited by the Applicant in independent claim 1.

Accordingly, the combination of Novak-Ellis does not render independent claim 1 unpatentable, and claim 1 is allowable. Independent claims 11, 21, and 32 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 11, 21, and 32 are also allowable over the references cited in the Final Office Action at least for the reasons stated above with regard to claim 1.

B. Rejection of Dependent Claims 2-10, 12-20, 22-31, and 33-38

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11, 21, and 32 under 35 U.S.C. § 103(a) has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-10, 12-20, 22-31, and 33-38 depend from independent claims 1, 11, 21, and 32, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-10, 12-20, 22-31, and 33-38.

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-38 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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